



TECHNICAL RELEASE TR 02/2016

COMPANIES ACT 2014

Examiners – statutory changes

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February 2016

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TECHNICAL RELEASE

INTRODUCTION

1. The provisions of Part 10, Examinerships, Companies Act, 2014, (“Part 10”) came into force on Monday, 1st June 2015.
2. This Technical Release summarises key changes made by Part 10 to previous company legislation which include:
 - . Petition to appoint an examiner to a “small company” can be made to the Circuit Court
 - . expanded requirements applicable to company’s notification of examiner’s appointment
 - . no liability shall attach to an examiner, nor will any legal or professional duty be contravened, where the examiner is exercising powers in compliance with *Section 524*.
 - . the examiner’s proposals can provide for a reduction in company capital
3. This Technical Release is intended to assist members in understanding the changes made to company legislation governing the examinership process. However, it does not purport to be a detailed analysis of the provisions of Part 10.
4. Statutory references are to the relevant sections of Part 10, unless otherwise indicated.

APPOINTMENT

5. The petition to appoint an examiner may, where the company is “small” as defined by *Sections 350 and 509(7)(b) and (8)*, be presented directly to the Circuit Court.
6. The Circuit Court can only appoint an examiner to a related company if that company is “small” (*Section 517(8) and (9)*).
7. The contents of the independent expert’s report on the survival prospects of all, or part, of the business, which must accompany the petition to appoint an examiner, are unchanged.
8. As in earlier company legislation, *Section 519* defines capacity to act as examiner as a person who would be qualified to act as the company’s liquidator. *Section 633 and 634, Part 11, Companies Act, 2014*, specify the qualifications required of a liquidator.

9. The existing requirement that various company documents bear a notice that an examiner has been appointed is extended by *Section 531(6)* to cover the company's website and e-mails issued by it.

RESIGNATION OR REMOVAL

10. *Section 532* restates earlier legislation.

POWERS

11. *Section 524(9)* provides no liability shall attach to an examiner, nor will any legal or professional duty be contravened, where the examiner is exercising powers in compliance with *Section 524*.
12. As heretofore, liabilities incurred by the company while an interim examiner stands appointed cannot be certified by the examiner (*Section 514*).
13. The examiner's report can include proposals which provide for a reduction in the company's company capital (*Section 542(6)(b)*). However, if the Court considers that change would result in the company capital being "manifestly inadequate", it will not confirm the proposals.

DUTIES

14. The examiner remains under an obligation (*Section 554(7)*) to "... in so far as is reasonably possible, make use of the services of the staff and facilities of the company to which the examiner has been appointed ...".
15. The examiner must provide a copy of his report to the Director of Corporate Enforcement (*Section 534(6)*). For those companies specified in *Section 510(2)-(4)* a copy must be sent also to the Central Bank of Ireland.

ENFORCEMENT

16. Where the Court revokes the confirmation of the examiner's proposals, because the compromise was procured by fraud (*Section 553*), a copy of that order is provided to the Director of Corporate Enforcement, in addition to the Registrar of Companies and (for certain companies) the Central Bank of Ireland.